

APPEAL NO. 032871
FILED DECEMBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 2, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to third quarter supplemental income benefits (SIBs). The claimant appealed, disputing the determination of nonentitlement and contends that she did not have a fair hearing alleging racial bias. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back, cervical and thoracic spine, bilateral wrist, right foot, and head injury on _____; that the claimant reached maximum medical improvement on February 17, 2000, with a 51% impairment rating; that the claimant had not commuted any impairment benefits; that the third SIBs quarter was from July 25 through October 23, 2003; and that the qualifying period for the third quarter of SIBs was from April 12 through July 11, 2003.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the third quarter. The claimant contends that she had no ability to work during the qualifying period in dispute. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Although the claimant looked for work during a portion of the qualifying period, it was undisputed that the claimant did not look for work in each week of the qualifying period.

The hearing officer found that the letter of June 18, 2003, from Dr. D constituted a medical narrative which specifically explained how the injury caused a total inability to work. However, the hearing officer determined that the claimant was not entitled to SIBs for the third quarter because the medical examination report of November 7, 2002, of Dr. C, and the functional capacity evaluation of September 10, 2002, are other

records which showed that the claimant had an ability to return to work in a sedentary or light-duty capacity during the entire qualifying period. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant provides no specific information regarding her allegations of bias and the hearing record in the present case indicates that the claimant made no objection to the hearing officer presiding over the case. Our review of the record does not indicate that there was any bias against the claimant, racial or otherwise. We find no merit in the claimant's contention that she did not receive a fair hearing.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge